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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,363	02/13/2004	Dave Procknow	018367-9805-00	7900
23409	7590	10/20/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			HOOK, JAMES F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/779,363

Applicant(s)

PROCKNOW ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 46-69 is/are pending in the application.
- 4a) Of the above claim(s) 54,55,66 and 67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 46-53,56-65,68 and 69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 46-69 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Newly submitted claims 54, 55, 66, and 67 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the subject matter of these claims was part of other embodiments and was not related to the structure of using a gasket to hold the member in place as set forth in elected figure 4.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54, 55, 66, and 67 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 46, 48, 50, 53, 56-58, 60, 62, 65, 68, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Cousimano. The patent to Cousimano discloses the recited passageway for directing fluid along a path that includes a bend comprising a conduit T having a first and second aperture at each end, and a bend portion adjacent

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the second aperture, an outer bend surface integrally formed as part of the conduit to at least partially define the second aperture, an insert 10 including at least a portion of an inner bend surface, the insert disposed near the second aperture such that the outer bend surface and the inner bend surface cooperate at least partially to define the bend, the bend has a flange B at the end of the bend, the conduit is a substantially tubular, and cylindrical on both the inner and outer surfaces, and further is circular in cross section, the fluid is an air/fuel mixture in that it is exhaust which routinely has unspent fuel and air, the use of such with coolant in a coolant system of an internal combustion engine or for intake air is merely intended use, the insert and passageway are used with an internal combustion engine, there is also a gasket provided at flange B which is adjacent the bend portion and insert, and where the gasket works in cooperation with the flange and head 16 which retains the insert in a desired position when the flange, head and gasket are in place. It can be seen that the insert A is formed on the inner part of the curve and all the flow through the bend portion occurs between the outer curved wall and the insert which forms the second component.

Claims 46-50, 53, 56-62, 65, 68, and 69 are rejected under 35

U.S.C. 102(b) as being anticipated by Reed. The patent to Reed discloses the recited tube configured to attach to an engine housing and guide fluid comprising a first component 1 having a bend portion that is a 90 degree sharp bend, and a second component 7 provided in the bend portion to direct flow by the bend, where the second component extends beyond the bend, the portion as seen in figure 3 allows all the flow to flow between the far outer curved portion of the bend and the second component

blade 7 as shown in figure 3, where the additional blades are considered merely additional structure and when using the term comprising the language of the claim is open ended and the reference can contain more structure and still read upon the claimed subject matter, the flow path is seen to be substantially circular, a flange is provided for connection to an intake passage of an internal combustion engine, and where the entire second component is within the first component.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51, 52, 63, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cousimano or Reed. The patents to Cousimano and Reed disclose all of the recited structure with the exception of what the insert is made from, specifically polyester thermosetting plastic, and forming the two components of the same material. It is considered an obvious choice of mechanical design to form the inserts of any materials capable for use in the system, including the same material, and the use of thermosetting plastics such as polyester are considered merely a choice of mechanical expedients and it would only require routine experimentation to arrive at optimum materials to use for the insert that would be both inexpensive and capable of use in a specific environment so that they can be replace if necessary as such would only

require routine skill in the art to modify the inserts in either Cousimano or Reed to have thermosetting plastic inserts such as polyester inserts as such would be cheaper to replace and will not deteriorate as fast as metals may when exposed to specific environments.

### ***Response to Arguments***

Applicant's arguments filed July 24, 2006 have been fully considered but they are not persuasive. The arguments are moot with respect to all the previous rejections except Cousimano. With respect to Cousimano and the argument that such does not teach a sharp corner, such is not persuasive where the bend in the reference is substantially covering a 90 degree angle and with no limit on the length of any structure it is considered a sharp angle to be a 90 degree angle regardless of the length of the tube needed to define the whole angle, therefor the second member is provided adjacent to the first portion which contains the bend along the inner surface of the bend and therefore meets the claimed subject matter of being adjacent to the bend portion along the interior. It is noted that the claim language as it now appears is very confusing, however, the examiner is reading the language as best he can in light of the specification and drawings, and it is believed that the structure of Cousimano still reads upon the claim language.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Kim disclosing a state of the art insert to control flow in pipes.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

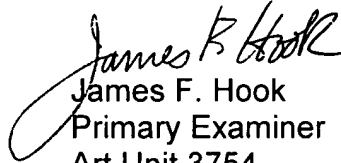
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
James F. Hook  
Primary Examiner  
Art Unit 3754

JFH